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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/410,368	09/30/1999	JOHN R. HAVENS	244/006	6760
34263	7590	05/21/2004	EXAMINER	
O'MELVENY & MEYERS 114 PACIFICA, SUITE 100 IRVINE, CA 92618			MARSCHEL, ARDIN H	
			ART UNIT	PAPER NUMBER
			1631	

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

SA-
Advisory Action

Application No.

09/410,368

Applicant(s)

HAVENS ET AL.

Examiner

Ardin Marschel

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See attached further explanation.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: of reasons of record as further explained as attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-4, 7-17, 21-24, 28-34, 36-39, & 67-89.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DETAILED ACTION

Further explanation of item # 2 on the enclosed Advisory action:

New issues are raised via the proposed amendment, filed 5/4/04, directed to "pH change in an overlying solution generated by providing" an electronic potential. It is acknowledged that applicants have argued that this amendment has been submitted in order to overcome a NEW MATTER rejection as summarized in the previous office action, mailed 2/13/04. Consideration of said NEW MATTER rejection in the previous office action, mailed 2/13/04, reveals that several citations were analyzed regarding said rejection as to written support for the then pending claim amendments with the conclusion that none of them supported the then pending claim amendments. None of these citations were suggested per se to be the basis for claim amending to overcome the rejection thus leaving it up to applicants to respond as they deemed appropriate to overcome the rejection. Applicants have chosen to submit a particular amendment as proposed in their response, filed 5/4/04, which raises new issues as to the above cited pH change phraseology which was not present in any previous claim sets. This raising of new issues via said proposed claim amendment, filed 5/4/04, supports this denial of entry of the amendment, filed 5/4/04. Thus, the proposed amendment, filed 5/4/04, raises new issues for consideration that would require further consideration and/or search and is not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal due to the new issues that would require further consideration and/or search. It is noted, however, that written support for the proposed amendment would be acceptable to support such an amendment, if entered.

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Further explanation of item # 5 on the enclosed Advisory action:

The NEW MATTER rejection of all pending claims is maintained due to the above noted non-entry of the amendment thus leaving the claims rejected as set forth in the previous office action, mailed 2/13/04, and not argued further.

The prior art rejections based on 35 U.S.C. 102(b) and (e)(2) as well as 103(a) based on prior art as summarized in the previous office action, mailed 2/13/04, are maintained due to non-entry of the amendment as summarized above thus leaving the claims rejected as set forth in said previous office action and not argued other than based on the non-entered claim amending. It is, however, noted that these prior art rejections may likely still be applicable, even if the proposed claim amending were entered, due to electrode practice in the cited prior art references which are supplied with an electrical potential which reasonably will in turn result in a pH change therewith which further in turn reasonably will have activation effects on nearby biomolecules.

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (703) 872-9306.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (571) 272-0718. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (571) 272-0722.

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Any inquiry of a general nature or relating to the status of this application should be directed to Legal Instrument Examiner, Tina Plunkett, whose telephone number is (571) 272-0549.

May 20, 2004

Ardin H. Marschel 5/20/04
ARDIN H. MARSCHEL
PRIMARY EXAMINER